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FEB 27 2007

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	CASE NO. 06-74203
Robert Bruce Wayland,	
	CHAPTER 13
Debtor.	JUDGE MASSEY

Robert Bruce Wayland,	
Movant,	
v.	CONTESTED MATTER
Kap Title, Inc.,	
Respondent.	

ORDER GRANTING OBJECTION TO CLAIM

Kap Title, Inc. filed a proof of an unsecured claim for \$74,645.12 in this case, of which \$9,736.20 is for attorney's fees. Debtor objected to this portion of the claim, and the Court held a hearing on the objection on February 14, 2007. At that hearing, counsel Debtor asserted that there is no evidence that Debtor received a "10-day" letter demanding payment from Kap Title, Inc., a condition precedent for liability for fees required by O.C.G.A. § 13-1-11.

Once the objecting party comes forward with evidence that contradicts the facial validity of the claim in some manner, the burden of proving the claim is on the creditor. *In the Matter of Fidelity Holding Co., Ltd.*, 837 F.2d 696 (5th Cir. 1988); *In re Polo Club Apartments Assocs. L.P.*, 150 B.R. 840 (Bankr. N.D. Ga. 1993). Debtor's counsel did not put his client on the witness stand to testify that he did not receive a demand letter. He merely asserted that there was no

evidence that one had been sent. That statement is not a sufficient basis for carrying Debtor's burden of going forward to show that there is no debt for attorney's fees. Kap Title's attorney contended that he has a copy of a letter purportedly sent by Kap's former counsel, but that attorney is deceased.

Debtor further objected to the claim for attorney's fees on the ground that the amount claimed is unreasonable. As Kap Title points out in its response to the objection, the reasonableness of attorney's fees may be challenged by a debtor under 11 U.S.C. § 506(b). *In re Welzel*, 275 F.3d 1308, 1314 (11th Cir. 2001) ("Nor does the language of 506(b) indicate that just because a given fee arrangement is enforceable under state law, it should be exempt from the reasonableness standard. The literal language refers to whether the loan contract specifies the attorney's fees arrangement, not to whether the arrangement is enforceable under state law.")

Counsel for Kap candidly stated at the hearing in response to the Court's inquiry that he had no knowledge of facts showing that his client had ever paid its former counsel attorney's fees with respect to its claim against Mr. Wayland.

The attorney's fees sought in Kap Title's proof of claim apparently relate to attempts to foreclose on real property securing Kap Title's claim against Debtor. The determination of whether or not fees sought are reasonable is a federal question. *In re Welzel, supra*. Decisions concerning the reasonableness of fees are generally guided by the so-call *Johnson* factors, *Johnson v. Georgia Highway Express*, 488 F.2d 714 (5th Cir. 1974). Here, there is no evidence on which the Court could determine the reasonableness of the fees sought. The fees sought are computed by reference to the state statute and not by the value of the of work performed.

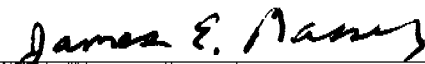
More importantly, Kap Title admits that it has not been billed by or paid its former counsel. For that reason, it cannot reasonably claim reimbursement for an expense it has not incurred. To see that this is so, imagine that the attorney who performed the foreclosures informed his client that the work would be done for free. (Kap Title's counsel stated that "it was one of those things; they were doing a favor for a friend.") The reasonable amount of a legal fee of nothing is nothing.

Kap Title points out in response to the objection that it has incurred attorney's fees for post-petition services rendered by its present counsel. Debtor's latest plan proposes to pay unsecured creditors in full. Although any postpetition claim for attorney's fees for services to collect prepetition fees that were never paid would also appear to be unreasonable, the Court is not empowered to decide whether Kap Title could assert a claim for postpetition fees paid because there is presently no claim for postpetition fees before the Court.

For these reasons, it is

ORDERED that Debtor's objection to the proof of claim of Kap Title, Inc. is GRANTED, its claim for attorney's fees in the amount of \$9,736.20 is DISALLOWED. The balance of its claim is ALLOWED.

Dated: February 26, 2007.


JAMES E. MASSEY
U.S. BANKRUPTCY JUDGE